MONTANA LEGISLATIVE HISTORY

Chapter 22 ~~19~~ Aug. Sp. Sess. 2002

Bill H _____ S 17 Original bill & history X C

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s) & EXEC. ACTION	8/9	X C	Hearing Date(s) & EXEC ACTION	8/6	X C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

WE HAVE NO EXHIBITS FROM THIS SPECIAL SESSION - CONTACT MONTANA HISTORICAL SOCIETY FOR COPIES OF EXHIBITS.

August 1, 2002

To: Members of the Montana Senate
Members of the Montana House of Representatives
Members of the Montana Supreme Court c/o Clerk of the Court Ed Smith
Secretary of State Bob Brown

AMENDED PROCLAMATION

Call to the 57th Legislature
for a Special Session

WHEREAS, Article V, section 6, of the Montana Constitution and section 5-3-101, MCA, provide that the Legislature may be convened in special session by the Governor; and

WHEREAS, Article VI, section 11, of the Montana Constitution provides that whenever the Governor considers it in the public interest, the Governor may convene the Legislature; and

WHEREAS, general fund revenues are anticipated to fall short of Legislative projections for FY2003; and

WHEREAS, in an effort to ensure that the expenditure of appropriations do not exceed available revenue, the provisions of section 17-7-140, MCA, were invoked directing agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium ending June 30, 2003; and

WHEREAS, based upon the revenue estimates available at the time that the budget director notified the legislative fiscal analyst, the legislative finance committee, and the revenue and finance committee pursuant to the requirements of section 17-7-140, MCA, the budget director recommended a 3 ½ % reduction in general fund expenditures; and

WHEREAS, a 3 ½ % reduction in general fund expenditures is being implemented based upon the information available at the time of commencing the process required under section 17-7-140, MCA; and

WHEREAS, based upon a continuing review and analysis of declining revenues to the state general fund, the budget director projects a general fund budget deficit that may not be met by a further directive to reduce spending beyond the current 3 ½ % reduction because of the limitations in section 17-7-140, MCA; and

WHEREAS, it is in the public interest of all Montanans that the programs funded through general fund expenditures by the Fifty-Seventh Legislature be considered at a special session of the Legislature; and

WHEREAS, it is in the public interest of all Montanans that a special session of the Legislature be called for the limited purpose of approving fund balance transfers, reducing general fund expenditures, reducing non-general fund appropriations and nonbudgeted transfers, reducing the general fund shortfall in revenue to meet the declining revenue projections for the 2003 biennium, and providing a guarantee account in the state special revenue fund.

NOW, THEREFORE I, Judy Martz, Governor of the State of Montana, pursuant to the authority vested in me by the Constitution and laws of the state of Montana do hereby call the Fifty-Seventh Legislature into Special Session in Helena, at the Capitol Complex at the hour of 9:00 a.m., the 5th day of August, 2002, and hereby direct the Special Session of the Fifty-Seventh Legislature to consider action limited to the following subjects:

1. Legislation approving fund balance transfers as submitted by the Office of Budget and Program Planning.
2. Legislation reducing general fund expenditures, including general fund expenditures exempted by section 17-7-140, MCA, House Bill 2, any other appropriation bill, statutory appropriation, or language appropriation.
3. Legislation reducing non-general fund appropriations and nonbudgeted transfers when the reduction will increase the general fund balance and any necessary statutory amendments to effectuate the legislative reductions.
4. Legislation reducing the general fund shortfall in revenue.
5. Legislation amending House Bill 41 and Senate Bill 495 to provide for a guarantee account in the state special revenue fund.
6. Confirmation by the Montana Senate of the water judge appointed by the Montana Supreme Court and agency heads appointed since the regular legislative session.
7. Legislation amending Montana's Sexual & Violent Offender Act to bring Montana into compliance with federal law which will restore lost federal funds for the current state fiscal year as well as ensure that Montana receives full federal fund allocation in future years.

Dated this 1st day of August, 2002.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed. DONE at the City of Helena, the Capitol, this 1st day of August, in the year of our Lord, two thousand and two.

JUDY MARTZ, Governor

ATTEST:

BOB BROWN, Secretary of State

Montana Legislature 2002 Session
Detailed Bill Information

Bill Draft Number:	LC0088	Current Bill Text
Bill Type - Number:	SB 17	Fiscal Note
Short Title:	Revise sex offender registration laws	
Primary Sponsor:	Chris Christiaens	

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	08/21/2002			
(S) Signed by Governor	08/21/2002			
(S) Transmitted to Governor	08/19/2002			
(H) Signed by Speaker	08/19/2002			
(S) Signed by President	08/10/2002			
(C) Sent to Printing	08/10/2002			
(S) Returned from Enrolling	08/10/2002			
(S) Sent to Enrolling	08/10/2002			
(H) Returned to Senate	08/09/2002			
(H) 3rd Reading Concurred	08/09/2002	85	15	
(H) 2nd Reading Concurred	08/09/2002	87	13	
(H) Scheduled for 2nd Reading	08/09/2002			
(H) Committee Report--Bill Concurred	08/09/2002			(H) Judiciary
(H) Committee Executive	08/09/2002	19	0	(H)

Action--Bill Concurred				Judiciary
(H) Hearing	08/09/2002			(H) Judiciary
(H) Referred to Committee	08/07/2002			(H) Judiciary
(S) Transmitted to House	08/07/2002			
(S) 3rd Reading Passed	08/07/2002	47	0	
(S) 2nd Reading Passed on Voice Vote	08/07/2002	48	0	
(S) Fiscal Note Printed	08/07/2002			
(S) Fiscal Note Signed	08/07/2002			
(S) Fiscal Note Received	08/07/2002			
(S) Scheduled for 3rd Reading	08/07/2002			
(S) Scheduled for 2nd Reading	08/07/2002			
(C) Sent to Printing	08/06/2002			
(S) Committee Report--Bill Passed as Amended	08/06/2002			(S) Judiciary
(S) Committee Executive Action--Bill Passed as Amended	08/06/2002	9	0	(S) Judiciary
(S) Hearing	08/06/2002			(S) Judiciary
(S) Referred to Committee	08/06/2002			(S) Judiciary
(C) Introduced Bill Text Available Electronically	08/05/2002			
(S) Fiscal Note Requested	08/05/2002			
(S) Introduced	08/05/2002			
(C) Draft Delivered to Requester	08/05/2002			
(C) Draft Ready for Delivery	08/05/2002			
(C) Draft in Assembly/Executive Director Review	08/05/2002			
(C) Draft in Final Drafter Review	08/05/2002			

(C) Bill Draft Text Available Electronically	08/05/2002			
(C) Draft in Input/Proofing	08/05/2002			
(C) Draft to Drafter - Edit Review [SAB]	08/05/2002			
(C) Draft in Edit	08/05/2002			
(C) Draft in Legal Review	08/05/2002			
(C) Draft to Requester for Review	08/05/2002			
(C) Draft Back for Redo	08/05/2002			
(C) Draft in Legal Review	08/02/2002			
(C) Draft to Requester for Review	08/02/2002			
(C) Fiscal Note Needed	08/02/2002			
(C) Draft Request Received	08/02/2002			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Christiaens	Chris	
Drafter	Petesch	Greg	
By Request Of	Department of Justice		
Primary Sponsor	Christiaens	Chris	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Criminal Procedure (see also: Law Enforcement)		Simple	CRP

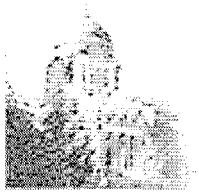
Additional Bill Information

Probable Fiscal Note:	Yes
Preintroduction Required:	N
Session Law Ch. Number:	22

DEADLINE	
Category:	General Bills
Transmittal Date:	08/30/2002
Return (with 2nd house amendments) Date:	08/30/2002

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	21-AUG-02	



Back to Top

Last Modified:8/27/2003 9:06:25 AM

SENATE BILL NO. 17

INTRODUCED BY C. CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SEX OFFENDER LAWS TO CONFORM TO FEDERAL LAW; REVISING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; REVISING THE CONDITIONS FOR REGISTRATION BASED UPON DURATION OF TIME IN A COUNTY; PROVIDING THAT AN OFFENDER CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT AGAINST A VICTIM UNDER 12 YEARS OF AGE IS SUBJECT TO MANDATORY LIFETIME REGISTRATION; REMOVING SEXUALLY VIOLENT PREDATORS FROM THE CATEGORY OF OFFENDERS WHO MAY RECEIVE A RISK LEVEL CLASSIFICATION REDUCTION; AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-506, AND 46-23-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older),

45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, ~~45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303,~~ 45-5-401, ~~45-5-603(1)(b),~~ or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 2. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more ~~if the offender was sentenced in another state~~ or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) must be with the probation office having supervision over the offender. Registration under subsection (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever person an offender registers with under subsection (1)(c) shall notify the other person of the registration.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the

offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice.

(4) The department of justice shall mail a registration verification form each 90 days to an offender designated as a level 3 offender under 46-23-509 and each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509. The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3).

(3) Except as provided in subsection (5), at any time after 10 years of registration, the offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition

upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 4. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 ~~or level 3~~ offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Applicability.** [This act] applies to convictions on or after [the effective date of this act].

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - SPECIAL SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIR LORENTS GROSFIELD**, on August 6, 2002 at 11:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chair (R)
Sen. Duane Grimes, Vice Chair (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 17, 8/3/2002
Executive Action: SB 17 DPAA

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 17

VICE CHAIR GRIMES opened the hearing and conducted the hearing throughout.

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, MT**

Proponents: **Mike McGrath, Montana Attorney General**
Bill Slaughter, Director, Dept. of Corrections
Donetta Klein, Executive Director, MT Coalition Against Domestic and Sexual Violence
Kathy McGowan, MT Sheriffs' and Peace Officers' Assoc. and MT County Attorneys' Assoc.
Troy McGee, Chief, Helena Police Dept.
Dave Jeseritz, MT Police Protective Assoc.

Opponents: **None**

Opening Statement by Sponsor: SEN. CHRISTIAENS, SD 23, Great Falls presented SB 17. This bill was requested by the Dept. of Justice. The State of Montana has been penalized because Montana was lacking in doing some things in statute regarding the registration of sex offenders. Since Montana had failed to comply with several federal statutes, the state had lost 10 percent (approximately $253,800)of the federal funds awarded under the Edward Byrne Memorial Grant Program. These monies could certainly be used in law enforcement in various communities. This bill would correct some of those deficiencies and take full advantage of the funds. The requirements for registration of sex offenders is important in that it will provide more safety for the citizens of Montana. There are several people and agencies that were in attendance to testify in support of the bill.

Proponents' Testimony:

Mike McGrath, Montana State Attorney General. He stated that he also serves on the Montana Board of Crime Control. He was very pleased to see this bill come forward at the Special Session of the Legislature and handed out an explanation of the proposed legislation EXHIBIT**(jus02a01)**. As was indicated, the state receives money from the federal government in the form of grants called Byrne Memorial money. Montana receives about $2.5 million in Byrne money. The money is used primarily for the local drug task forces that are in most of the communities around the state. It is administered by the Board of Crime Control. Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended (Pam Lychner Act). This Act requires certain offenders, convicted of sex offenses, to register and obtain lifetime registration as sex offenders. One of the provisions of that Act required states to impose the lifetime registration as a condition to receive those monies. There are additional requirements that would dealing with sex offenders who are students in the Montana university system who have been convicted of sexual offenses in other states.

Basically, this bill amends Montana's Sex Offenders' Registration Act to add the categories of kidnaping, false imprisonment and solicitation of a minor to commit prostitution. Those provisions currently are not covered under Montana's Sex Offenders' Registration Act. If a person is convicted of a second offense of these crimes they would be required to register lifetime. Under Montana's current statutory law, a person who has been designated a level three sex offender, which is the most dangerous and are determined to be predators, could not go back at a later date in court and have that designation changed. That is the issue that has created the biggest problems for federal law enforcement agencies and that is the reason Montana is being penalized the 10 percent. The bill would also clarify that an offender, convicted of sexual intercourse without consent against a victim under the age of 12, would have to register for life.

Mr. McGrath informed the committee that **Mr. John MacMaster, Legislative Staff**, had reviewed the bill and found a small flaw and had prepared an amendment EXHIBIT**(jus02a02)**SB001701.ajm. His office has looked at the amendment and it essentially states that if a person in Montana has been convicted of a sex offense, they are required by legislation to attend sex offender training treatment in the prison and also are required to comply with some other requirements when released. This amendment makes it clear that because kidnaping, false imprisonment and solicitation of a minor would now be included, a person convicted of kidnaping an adult and does not commit a sexual act in the course of the kidnaping crime they are not required to register as a sex offender and would not be required to take sex offender treatment in prison.

Mr. McGrath appreciated the help of **Mr. MacMaster** and his office supports the bill and the amendment.

Bill Slaughter, Director, Dept. of Corrections. The Governor's office and the Attorney General's office support the bill fully. As a member of the Board of Crime Control for the past 12 years, he has worked with Attorney General McGrath on these issues daily. The addition of Montana's seven drug task forces is probably the most significant change in law enforcement in Montana. It focuses on drug crime and all involved are doing a great job. These people have worked together and there is tremendous cooperation between agencies. This bill means greater public safety for Montanans and this money will help them in doing their job.

Donetta Klein, Executive Director, MT Coalition Against Domestic and Sexual Violence. The Coalition supports SB 17 which will implement critical changes to Montana's Sexual and Violent

Offender Act and will bring Montana into compliance with federal law. The monies received by the state will fund much needed community drug enforcement and violence prevention programs that benefit victims of crime. The changes proposed will also enhance protection for victims of sexually violent predators by requiring lifetime registration. A safety feature for both victims and communities. She supports the bill and the amendment.

Kathy McGowan, MT Sheriffs and Peace Officers' Assoc. and MT County Attorneys' Assoc. Both organizations wholehearted support SB 17 and would appreciate the committee's support also.

Troy McGee, Chief, Helena Police Dept. He represents the MT Chiefs of Police Assoc. The money that is received for the seven local drug task forces is very important. The task force in Helena is called the Missouri River Drug Task Force and covers seven counties and seven cities and towns from Lewis & Clark County to Sweetgrass and Madison Counties. He urged support for SB 17.

Dave Jeseritz, MT Police Protective Assoc. The Assoc. supports SB 17 and urged support from the committee.

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR DUANE GRIMES asked about the amendment that was proposed and how it addressed the issue of kidnaping. He addressed his question to **Attorney General McGrath. Mr. McGrath** said that his understanding of that issue was what would happen when kidnaping did involve sexual offenses. There are some states that have kidnaping statutes but no specific statutes dealing with sexual assault to children. The amendment makes it clear that persons who were convicted of the offense of kidnaping would not necessarily be required to attend sex offender treatment or undergo HIV testing unless there was a sexual offense involved in that crime.

SEN. MIKE HALLIGAN asked **John MacMaster** to explain the amendment. **Mr. MacMaster** informed the committee that there is a code section that states: a person cannot enter a plea of nolo contendere if they have committed a sexual offense. With the redefinition of sexual offense in the bill to include kidnaping, etc. they would not be able to enter that nolo contendere plea. The amendment provides for the exclusion of kidnaping, etc. if no sexual offense had been committed.

VICE CHAIR GRIMES asked if a person could plead nolo contendere if that person committed a kidnaping and there was a sexual offense committed. **Mr. MacMaster** pointed to amendment No. 2, (4). His understanding is the court does not want to accept a nolo contendere plea to a sexual offense unless that person agrees to take the prison treatment program. Section 2, (3)addresses this issue: An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

SEN. RICK HOLDEN asked if Section 1, (6) (a) was required to meet the federal statutes. **Mr. McGrath** responded that yes it was.

VICE CHAIR GRIMES wanted to know if there was anything the Legislature could or should do in regard to those people who plea bargain and thereby escape the prison treatment program. **Mr. McGrath** replied that the point was well taken and was an issue that prosecutors struggled with. Most prosecutors in Montana no longer plea bargain away sex offenses and are aggressive on most sex offenses if they can prove that offense. A judge does have the authority depending on the facts of the case and may well have the authority to order a person into treatment even if they don't plead to that crime. There may be a bill coming up in the regular session that would give the sentencing judge more authority to impose a sentence even if the person didn't specifically plead to the crime that the sentence addresses.

VICE CHAIR GRIMES inquired if most kidnaping cases involved sexual offenses. **Mr. McGrath** did not have any statistics but from his experiences as a prosecutor

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most kidnaping cases involving juveniles were usually custodial disputes either between parents or some relative and those did not involve sexual offenses.

Closing by Sponsor:

SEN. CHRISTIAENS pointed out that he felt the amendments were necessary and points out the judge's discretion as to what they can order at time of sentencing. The reason for the bill is to make sure that those who have been convicted of sex offenses are registering so that the public has some degree of safety, law enforcement knows who is in the state and that Montana is in compliance with federal mandates. The end result is that the money that funds the drug task forces around the state will be

coming into the state. One of the things that has been proliferating in the last few years is the methamphetamine problems. Montana's task forces are doing a good job in assisting in apprehension and conviction. He urged a Do Pass As Amended.

EXECUTIVE ACTION ON SB 17

Motion/Vote: **SEN. HALLIGAN** moved that **SB 17 BE AMENDED (SB001701.ajm). Motion carried unanimously.**

Motion: **SEN. HALLIGAN** moved that **SB 18 DO PASS AS AMENDED.**

Discussion: **VICE CHAIR GRIMES** made comment that the interim committee recommended passage of SB 17.

Vote: Motion **carried unanimously.**

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. LORENTS GROSFIELD, Chair

MARY GAY WELLS, Secretary

LG/MGW

EXHIBIT(jus02aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - SPECIAL SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIR JIM SHOCKLEY**, on August 9, 2002 at 10:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chair (R)
Rep. Paul Clark, Vice Chair (D)
Rep. Jeff Laszloffy, Vice Chair (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB17, 8/2/2002
Executive Action: SB17, Be Concurred In

HEARING ON SB17

Sponsor:

Sen. Christiaens-SD 23-Cascade, Montana

"An act revising sexual offender laws r conform to federal law, revising the definitions of "sexual offense" and "violent offense"; revising the conditions for registration based upon duration of time in a county; providing that an offender convicted of sexual intercourse without consent against a victim under 12 years of age is subject to mandatory lifetime registration; removing sexually violent predators from the category of offenders who may receive a risk level classification reduction".

Brings sex offenders laws into compliance with federal laws that will allow us to take full advantage of Robert Burn Federal Grant money. Life long offenders, Level 3 offenders, offenses with juveniles under the age 12 , a person comes from another state and stays here 10 days or more or 30 days in a calendar year, they are required to register. "Burn Memorial Fund" lost $253K. Money to go to Drug Task Force. We do not require people who are in the State Hospital to register as offenders.

Proponents:

Mike McGrath-Attorney General of the state of Montana, also Montana Board of Crime Control

Montana gets money from the federal government in the form of Burn Memorial Grants. $2.M a year. Most of the money is used for Drug Task Force. Only money that is used for drug enforcement. There are strings attached. Wedderling/Lynchner Acts. SB17 seeks to include charges as to : burglary, promotion of prostitution with a minor, false imprisonment, 2nd offences as sex offences. Lifetime registration for Level 3 offenders. Clarifies an offender convicted of sexual intercourse with a juvenile under the age of 12, register as a lifetime register. Re: Sex offenders at State Hospital; my understanding is that the statue already states they register. This is a win/win situation, toughens up our sex offender registration act, improves our enforcement of anti-drug efforts.

Bill Slaughter-Board of Crime Control, Director of Dept. of Corrections

The Drug Task Force works, that's why the prisons are full. Brought together, local, state and federal enforcement to work together, please vote for this SB17.

Beth Satrye-Montana Coalition Against Domestic and Sexual Violence

Strongly support SB17

Troy McGee-Chief of Police, Helena, Montana

Strongly support of SB17. We are part of the Drug Task Force in Helena.

Kathy McGowan-Montana Sheriff's and Peace Officers Association, Montana County Attorney's Association

Strongly support SB17.

Dave Jezrets (?)-Police Officer in Helena, Montana, Montana Police Protective Association.

We represent over 500 officers in the state of Montana. We strongly support SB17.

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

Rep. Peterson to **McGrath**-Received letter from the Attorney General's office; back side of letter "it deletes the category of kidnaping, solicitation, etc. Why deleted? **Mr. McGrath** -Good question; we're complying with federal regulations and they are adding (Montana only state with violent registry)the children kidnaping, some involve sexual offenses.
Rep. Harris to **McGrath** -Section 5 page 4 line 26-"deletion of offender sentenced in another state" Why are we deleting? **Mr. McGrath** -it requires anybody who has a sex offense in Montana or any other states to register. Re: out of state student, they are required to register. If you look at whole bill, it's not

excluding, it's just not making a separate category. **Rep. Harris** to **McGrath** -What if a clever defense attorney is going to take this deleted language and say my client was convicted elsewhere; can we be sure to that attorney will not use that? **Mr. McGrath** - It should be covered. Defer to **Allie Shepherd** -drafted bill- Attorney General's Office-the law is on the books already; just a better clarification.
Rep. Shockley to **McGrath** -page 7, line 19 problem. Sexual offenders in prison who were never designated 1, 2, or 3. Dept. designates them when they are released. Dept. uses lowest category due a constitutional problem. Would you object that we put that in bill, so that person needs to get re-sentenced. Bullet -proof. **Mr. McGrath** -If we make that amendment, we might not have time for this bill to be on the floor; Friday of a Special Session, etc. Work on that and get it resolved for the regular session. Also concerned there might be a Fiscal Note if DOC has to transport prisoners back to prison to have a hearing before release.

Closing by Sponsor:

Sen. Christiaens-Amendment would pose some problems implementing the bill.
Rep. Newman-Look at page 4 top sub section B-it tells you a sex offense in any other state is a violation of the law.

EXECUTIVE ACTION ON SB17

Motion/Vote: **REP. LASZLOFFY** moved that **SB17 BE CONCURRED IN. Motion passed unanimously.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 397}

ADJOURNMENT

Adjournment: 10:27 A.M.

REP. JIM SHOCKLEY, Chair

PAM SCHINDLER, Secretary

JS/PS

EXHIBIT(juh05aad)